IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 11TH APRIL 2007 / 21ST CHAITHRA 1929

RCRev..No. 123 of 2007()

RCA.65/2006 of I ADDL.SUB COURT, KOZHIKODE
RCP.190/2004 of PRL.M.C.,KOZHIKODE-II
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REVISION PETITIONER/APPELLANT/IST RESPONDENT

P.K.GIREESH, S/O.K.C.KRISHNAN,
`GATHA', KALLAI, PANNIYANKARA AMSOM DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.THOMAS ANTONY

RESPONDENTS:

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1. P.SUKUMARAN, S/O.KUNHIRAMAN,
RAMSQUARE, P.T.USHA ROAD, KALATHILKUNNU AMSOM DESOM, KOZHIKODE TALUK, REPRESENTED BY POWER OF ATTORNEY BHUVANADAS, S/O.APPU, KOORMANTHARA HOUSE, KADALUNDI AMSOM, MANNUR DESOM, KOZHIKODE TALUK.

2. P.K.NIDEESH, S/O.K.C.KRISHNAN,
GURUKRIPA MANDIR, 17/394, PAVAMANI ROAD,
KASABA AMSOM DESOM, KOZHIKODE.
3. AMEER.K.P., GURUKRIPA MANDIR,
17/394, PAVAMANI ROAD, KASABA AMSOM DESOM,
KOZHIKODE.
4. SHAMEER, GURUKRIPA MANDIR,
17/394, PAVAMANI ROAD, KASABA AMSOM DESOM,
KOZHIKODE.

BY ADV. SRI.S.RADHAKRISHNAN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 4/04/2007,THE COURT ON 11/4/07 PASSED THE FOLLOWING:

P.R.Raman & Antony Dominic, JJ.
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R.C.R.No.123 of 2007
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Dated this the 11th day of April, 2007.

ORDER

Antony Dominic,J.

The 1st respondent in RCP No.190 of 2004 on the file of Additional Munsiff's and Rent Control Court, Kozhikkode, whose order of eviction was confirmed by the Rent Control Appellate Authority in RCA No.65 of 2006, is the Revision Petitioner.

2. Briefly put the facts of the case are that the 1st respondent herein is the landlord who had filed the Rent Control Petition, urging grounds under Sections 11 (2) (b), 11(3) and 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act 1965 (hereinafter referred to as "the Act" for short). The landlord entrusted the petition scheduled premises to the 1st respondent, pursuant to a licence agreement dated 01.03.1996. Thereafter, O.S.No.254 of 2003 was filed for directing the Revision Petitioner to vacate the building, in which a decree was passed that the relationship between the parties is that of landlord and tenant. Following the decree, the Rent Control Petition was filed.

3. In support of the ground under Section 11(2)(b), it was alleged that rent of Rs.10,000/- per month was in arrears from 01.01.2003. It was contended that the petitioner bonafide

required the building for his son-in-law to start business in building construction materials and that they had no other suitable building in their possession. It was also alleged that without the consent or knowledge of the landlord, the Revision Petitioner had sublet a portion of the building to the 2nd respondent who was conducting a telephone booth and that the other portion was also sublet to the 3rd and 4th respondents, who were conducting business in scrap materials.

4. Before the Rent Control Court, respondent No.1, the Revision Petitioner herein and respondents 2 to 4, the alleged sub lessees, had entered appearance and filed separate counter statements. In the counter filed by the 1st respondent he alleged that sent upto and inclusive of January 2003, was paid and that from February 2003 the landlord willfully refused to accept payment. He denied the bonafide need urged by the landlord and according to him it was only a ruse to evict him from the premises. He pleaded for the benefit of the 2nd proviso to Section 11 (3). The 1st respondent asserted that he is conducting the telephone booth in one portion of the building and the business of scrap material in the other portion of the building. According to him the 2nd respondent his younger brother, who was looking after the telephone booth in his absence and respondents 3 and 4 are his coolie workers engaged for his business in scrap materials Having thus denied the allegation of sublease, the 1st respondent prayed for dismissal of the petition.

5. In the separate counter statement filed by respondents 2 to

4 they denied being sub tenants and supported the contention of the 1st respondent that the 2nd respondent is only looking after the business of the 1st respondent. Similarly, respondents 3 and 4 also pleaded that they are the workers in the scrap business run by the 1st respondent. Evidence of PWs1 and 2 and RW1 were recorded and Exts. A1 to A8 and B1 to B8 were marked. The Rent Control Court by its order dated 15th February 2006 held that the 1st respondent landlord is entitled an order of eviction under Section 11(2)(b) of the Act. It was also held that the need alleged in the petition was not bonafide and that the Revision Petitioner had sub let the building to respondents 2 to 4 and therefore is liable to be evicted under Section 11(4)(i) of the Act.

6. The Revision Petitioner filed RCA No.65 of 2006 and the 1st respondent landlord filed cross appeal against the finding of the Rent Control Court declining eviction under Section 11(3) of the Act. The Rent Control Appellate Authority by its judgment dated 14.03.2007 held that arrears of rent of Rs.2.70 lakhs was deposited after the statutory period and rent for the month of January 2003 is in arrears and hence the landlord was held to be entitled to an order of eviction under Section 11 (2)(b) of the Act. On the question of sublease as found by the Rent Control Court, the Appellate Authority re-examined the issue and affirmed the finding and held that the landlord is entitled to get an order of eviction under Section 11(4)(i) of the Act. Upholding the finding of the Rent Control Court that the need urged by the landlord was not bonafide, the Rent Control Appellate Authority dismissed the cross appeal filed by the 1st respondent landlord.

Thus it is against the order of eviction concurrently passed under Section 11(2)(b) and 11(4)(i), that the tenant has filed this Revision Petition.

7. The counsel for the Revision Petitioner confined his submissions to the finding of the lower authorities under Section 11(4)(i) of the Act. According to the counsel the landlord had not discharged his burden of proving sub lease by adducing any evidence. According to him, on the evidence available, it could be found that the businesses carried on in the premises were that of the Revision Petitioner and that the alleged sub lessees were none other than his brother and his workers. Counsel placed reliance on the judgments in the case of **Jagdish Prasad Vs. Smt. Angoori Devi (1984 (2) SCC 590) & Gurubachan Singh and another Vs. Ram Niwas (2006 (5) SCC 296)**. On the other hand, the counsel for the 1st respondent landlord, who entered appearance on caveat, contended that the concurrent findings of sub lease did not merit any interference. According to him, the landlord having proved sub lease, the Revision Petitioner did not adduce any evidence to discharge his burden, it was pointed out that even the Commissioner was not examined. The counsel placed reliance on **Damodara Pai Vs. Challamma (2003 (1) KLT 487)**, **Mini Vs. Leela (2004 (1) KLT 195) and Vipinachandran Vs. Xavier (2005 (4) KLT 850)**.

8. We have considered the submissions made by the counsel for both parties.

9. We are concerned only with the correctness of the concurrent findings of both the Rent Control Court and the Appellate Authority, in regard to the ground under Section 11 (4) (i) of the Act. In terms of this provision a landlord is entitled to an order of eviction, if after the commencement of the Act, the tenant has without the consent of the landlord, transfers his right under the lease or sublets the entire building or any portion thereof if the lease does not confer on him any right to do so. This section has been interpreted as one conferring the initial burden on the landlord to prove transfer of possession and that once the landlord has established that a person other than the tenant is in occupation of the premises, there is no further burden on him to establish the exact relationship between the tenant and the person in possession. It has been held that then the burden shifts to the tenant to prove the exact relationship between himself and the person in possession or occupation and to rebut the presumption of sublease arising from the occupation of others. In **Vipinachandran Vs. Xavier (2005 (4) KLT 850)**, this Court has held that;

> "**Though landlord is not in a position to establish the clandestine arrangements between the respondents landlord is expected only to establish the presence of second respondent in the premises with whom landlord has no jural relationship. Burden is entirely on the tenant to establish the jural relationship between him**

and the sublessee."

10. The case of the landlord is that the building has been sublet to respondents 2 to 4 and it is his specific contention that the 2nd respondent, though a brother of the tenant, was conducting a telephone booth in a portion of the building, the possession of which was transferred to him and that respondent 3 and 4 retained exclusive possession of the remaining portion, where they are conducting business in scrap materials. On the other hand, the tenant would content that the businesses were conducted by himself and that the 2nd respondent was looking after the telephone booth on his behalf and that respondents 3 and 4 were his coolie workers, engaged in connection with the business in scrap materials.

11. Thus, the presence of respondents 2 to 4 stands admitted and the dispute is only regarding their status. Apart from the oral evidence that was tendered by the landlord, he had also taken out an Advocate Commission and Ext.C1 report was available on record. On evidence the Rent Control Court found that the petition schedule building was divided into two portions and in one portion the telephone booth was conducted by the younger brother of the Revision Petitioner. Though it was asserted by the 1st respondent in his evidence that the telephone booth was his own, and he has been maintaining accounts, he did not produce any such accounts. It was also in evidence that he has conducting some other businesses elsewhere. Even at the time of the Commissioner's visit, the

presence of respondents 2 to 4 have been noticed and on the failure of the Revision Petitioner to produce an evidence to prove that he was conducting the business, the Rent Control Court was led to the conclusion that the tenant has transferred possession of the building to respondents 2 to 4 and that they are conducting the business on their own.

12. The Rent Control Appellate Authority also re-appreciated this contention. Referring to the evidence available, the Rent Control Appellate Authority also examined the contention that the tenant was conducting the business of his own. It has found that if the tenant was having telephone connection in his name and was maintaining accounts and paying bills the available documents would have substantiated the contention and that he has not produced such documents, which were within his reach. The Appellate Authority also took note of the report of the Commissioner, which stated that 3rd and 4th respondents were carrying on business in scrap material and that the 3rd respondent was the owner of the business, with the 4th respondent working under him. In so far as the telephone booth is concerned, the Commissioner noted the presence of the 2nd respondent and taking into account the circumstances, found that he was doing the business of his own. On the available evidence the Appellate Authority also entered a finding that the tenant had no control over the business run by respondents 2 to 4 and that there was transfer of possession to others.

13. Having considered the finding of the Rent Control Court, as affirmed by the Appellate Authority, we hold that the landlord

has satisfactorily discharged his burden under Section 11(4)(i) of the Act by establishing occupation of the premises by respondents 2 to 4 and that it was upto the Revision Petitioner to prove the relationship between himself and respondents 2 to 4 and thus rebut the presumption against him. This burden he could have discharged by producing the documents, which he was claiming to be maintaining and/ or even by examining the Commissioner, had submitted Ext.C1 report. Having failed to discharge the burden, the tenant is liable to be visited with an order under Section 11(4)(i) of the Act. In the circumstances, we see no reason to disagree with the concurrent findings of fact arrived at by the authorities below.

14. The counsel for the tenant referred us to the judgment of the Apex Court in **Jagdish Prasad Vs. Smt. Angoori Devi (1984 (2) SCC 590)**, which held that the initial burden to prove subletting is on the landlord. In the case of **Gurubachan Singh and another Vs. Ram Niwas (2006 (5) SCC 296)**, it was held by Apex Court that as long as control of the premises is kept by the tenant, and the business run in the premises is of the tenant, subletting flowing from the presence of a person other than a tenant in the shop cannot be assumed. We have no doubt about the correctness of the legal position as available in the aforesaid judgments. However, on the facts, the landlord having discharged his burden and the tenant having failed in this respect, in our view, these judgments do not come to the assistance of the Revision Petitioner, in the facts of this case.

15. At one stage of the arguments, the counsel for the petitioner also wanted us to take note of the fact that the telephone booth was being looked after by none other than his brother and at any rate, sublease cannot be assumed in such a case. This was countered by the counsel for the 1st respondent by referring us to **Damodara Pai Vs. Challamma (2003 (1) KLT 487)**, where this Court had held that a transfer of possession in favour of the brother of the lessee therein, amounted to sublease. Counsel also referred us to the judgment in **Mini Vs. Leela reported in 2004 (1) KLT 195**, where it was held that even if only a portion of the building was sublet the landlord has got the right to evict the tenant from the whole building. Since, on the facts and evidence available, a case of sublease has been proved, these judgments certainly land support to our conclusion.

16. In the light of what is discussed above, we do not find any merit in the Revision Petition and accordingly the same stands dismissed.

P.R. Raman,
Judge.

Antony Dominic,
Judge.

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